

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re:

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| GEORGE A. GEORGES, <i>Debtor(s)</i> | : | Case No. 02-25980T |
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| GEORGE A. GEORGES, <i>Plaintiff(s)</i> | : | |
| v. | : | Adv. No. 03-2460 |
| JEAN GEORGES, <i>Defendant(s)</i> | : | |

ORDER

AND NOW, this 3rd day of November, 2005, it is ORDERED that Defendant's motion to dismiss this adversary complaint is GRANTED¹ and this adversary complaint is DISMISSED WITH PREJUDICE as the court finds that the complaint fails to state a claim upon which relief can be granted, see Fed. R. Civ. P. 12(b)(6), which is made applicable to adversary

1. We note that on December 17, 2004, we entered an Order in this adversary proceeding stating that we were reserving our ruling on Defendant's motion to dismiss this adversary complaint pending a final decision on Debtor's appeal of the Order we entered on August 12, 2003 in Debtor's main bankruptcy case, docketed to Case No. 02-25980T. Debtor had appealed this Order to the United States District Court for the Eastern District of Pennsylvania on August 19, 2005. This appeal was assigned to the late Honorable Clarence C. Newcomer (2:03-cv-05225-CN), who affirmed our August 12, 2003 Order on June 23, 2004. On July 20, 2004, Debtor appealed Judge Newcomer's June 23, 2004 Order to the United States Court of Appeals for the Third Circuit (04-3080). On June 15, 2005, the Third Circuit affirmed Judge Newcomer's June 23, 2004 decision. On June 29, 2005, Debtor filed a petition for en banc rehearing, which was denied by the Third Circuit Court of Appeals on July 20, 2005. As no further appeals have been taken, the Third Circuit's decision affirming Judge Newcomer's decision is now final, and we may now rule on Defendant's motion to dismiss this adversary complaint.

proceedings in bankruptcy cases by Fed. R. Bankr. P. 7012(b), since the obligations owed by Plaintiff to Defendant under the state court equitable distribution order are post-petition obligations which were not discharged by the discharge order entered by this Court in Plaintiff/Debtor's main bankruptcy case (Case No. 02-25980T) on May 6, 2003. See Georges v. Georges, Civ. Action No. 03-5225 at 2 (E.D. Pa. June 23, 2004); Ingebrethsen v. Ingebrethsen (In re Ingebrethsen), Dist. Ct. No. 97-7115, 1998 U.S. Dist. LEXIS 9559 at *11-13 (E.D. Pa. June 23, 1998); Scholl v. Scholl (In re Scholl), 234 B.R. 636, 639, 645 (Bankr. E.D. Pa. 1999); see also Simeone v. Simeone (In re Simeone), 214 B.R. 537, 548 (Bankr. E.D. Pa. 1997); Bennett v. Bennett (In re Bennett), 175 B.R. 181, 185-186 (Bankr. E.D. Pa. 1994); In re Wilson, 85 B.R. 722, 726 (Bankr. E.D. Pa. 1988).²

Reading, PA

THOMAS M. TWARDOWSKI
United States Bankruptcy Judge

2. To explain, Plaintiff/Debtor ("Debtor") filed his chapter 7 petition on December 10, 2002 and a discharge Order was entered by this Court on May 6, 2003. Debtor's bankruptcy case was thereafter closed on May 9, 2003. On September 5, 2003, the Lancaster County Court of Common Pleas entered an Order determining the equitable distribution rights of Plaintiff and Defendant ("equitable distribution order"). Hence, the equitable distribution order was entered **after** this court's discharge order, and therefore, Plaintiff's obligations to Defendant under the state court equitable distribution order constitute post-petition claims that were not subject to the discharge order. Georges, Civ. Action No. 03-5225 at 2; Ingebrethsen, 1998 U.S. Dist. LEXIS 9559 at *11-13; Scholl, 234 B.R. at 639, 645. While we recognize that there is contrary authority in other Districts within this Circuit (see Schorr v. Schorr (In re Schorr), 299 B.R. 97, 103 (Bankr. W.D. Pa. 2003) (holding that pre-petition request for equitable distribution is a claim subject to discharge); Polliard v. Polliard (In re Polliard), 152 B.R. 51, 54 (Bankr. W.D. Pa. 1993), we opt to follow the rationale of the courts in this District. To repeat, the right to payment on an equitable distribution claim, which creates a claim for bankruptcy purposes, does not arise until a court enters an order of equitable distribution or the parties reach an agreement for the disposition of the marital property. Georges, Civ. Action No. 03-5225 at 2; Ingebrethsen, 1998 U.S. Dist. LEXIS 9559 at *12-13; Scholl, 234 B.R. at 641-642. In this case, the state court equitable distribution order was entered post-petition and, therefore, Defendant's equitable distribution claim arose post-petition and was not discharged. Georges, Civ. Action No. 03-6893 at 2; Ingebrethsen, 1998 U.S. Dist. LEXIS 9559 at *12-13; Scholl, 234 B.R. at 639.